

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 583 – SB 825

March 29, 2017

SUMMARY OF ORIGINAL BILL: Enhances the manufacture, delivery, sale, or possession of fentanyl to a class B felony for amounts under 200 grams. Decreases each felony marijuana offense under Tenn. Code Ann. § 39-17-417(g) by one classification.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Expenditures – Net Impact – \$6,858,800/Incarceration*

Increase Local Expenditures – \$48,600**

SUMMARY OF AMENDMENT (005815): Deletes and rewrites the proposed legislation to create a class B felony for manufacturing, delivering, selling, or possessing with intent five grams or more of any substance containing fentanyl.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$3,316,400/Incarceration*

Assumptions for the bill as amended:

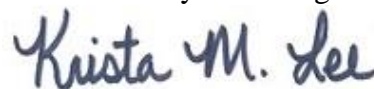
- Under current law, fentanyl is a Schedule II controlled substance. Manufacturing, delivering, selling, or possessing with intent fentanyl is a class C felony in any amount up to 200 grams, a class B felony in any amount 200 grams to 2,000 grams, and a class A felony in any amount 2,000 grams or more.
- The proposed legislation creates a class B felony for manufacturing, delivering, selling, or possessing with intent five grams or more of any substance containing fentanyl, not five grams or more of pure fentanyl.
- Such substances could include heroin laced with fentanyl, cocaine laced with fentanyl, or counterfeit prescription opioids containing fentanyl.
- Most such substances will be schedule I or II drugs, like fentanyl, and punished the same as fentanyl. The proposed legislation will enhance the offenses if the amount of the substance is five grams or more and contains any amount of fentanyl.

- Statistics from the Department of Correction (DOC) show an average of 540 admissions each year for manufacturing, delivering, selling, or possessing with intent a schedule II drug. It is assumed that 15 percent ($540 \times 0.15 = 81$ admissions) of these admissions are attributable to substances over five grams that contain some amount of fentanyl.
- The proposed legislation will result in 81 admissions being enhanced from a class C felony to a class B felony.
- The average time served for a class C felony is 3.51 years; the average time served for a class B felony is 6.32 years. The proposed legislation will result in each offender serving an additional 2.81 years ($6.32 - 3.51$).
- According to the DOC, the average operating cost per offender per day for calendar year 2017 is \$68.75.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for 10 ($81 \times .1178$) additional admissions for a total of 91 ($81 + 10$).
- According to the DOC, 48.6 percent of offenders will re-offend within three years of their release. A recidivism discount of 48.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($91 \text{ offenders} \times .486 = 44 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 47 offenders ($91 \text{ offenders} - 44 \text{ recidivism discount}$) serving an additional 2.81 years (1,026.35 days) at a cost of \$70,562 ($\$68.75 \times 1,026.35 \text{ days}$) per offender. The cost for 47 offenders is \$3,316,414 ($\$70,562 \times 47$).

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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